

1 KATHARINE H. PARKER, *Appearance Pro Hac Vice*  
2 PROSKAUER ROSE LLP  
3 1585 Broadway  
4 New York, NY 10036-8299  
5 Telephone 212.969.3000  
6 Fax 212.969.2900  
7 kparker@proskauer.com

5 DAWN M. IRIZARRY, SBN 223303  
6 GEORGE SAMUEL CLEAVER, SBN 245717  
7 PROSKAUER ROSE LLP  
8 2049 Century Park East, 32nd Floor  
9 Los Angeles, CA 90067-3206  
Telephone: (310) 557-2900  
Facsimile: (310) 557-2193  
dirizarry@proskauer.com  
scleaver@proskauer.com

10 Attorneys for Defendant  
11 CENDANT CORPORATION SHORT TERM  
DISABILITY PLAN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

15 JOHN DOE, ) Case No. C 07-04908 MHP  
16 Plaintiff, )  
17 v. ) **JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED]  
ORDER**  
18 CENDANT CORPORATION SHORT TERM ) JUDGE: Hon. Marilyn Hall Patel  
19 DISABILITY PLAN, ) CTRM: 15, 18th Floor  
20 Defendant. ) DATE: January 7, 2008  
21 ) TIME: 4:00 p.m.  
22 ) Action Filed: December 28, 2007

1 Pursuant to Local Rule 16-9, defendant Cendant Corporation Short Term Disability Plan  
 2 ("the Plan"), and plaintiff John Doe ("Mr. Doe" or "Plaintiff"), jointly submit this Case  
 3 Management Statement.

4 **1. JURISDICTION AND SERVICE**

5 This Court has subject matter jurisdiction over Plaintiff's claims pursuant to ERISA  
 6 § 502(e) and (f), 29 U.S.C. § 1132(e) and (f), and 28 U.S.C. § 1331.

7 Plaintiffs have asserted that personal jurisdiction exists and venue is proper, and no parties  
 8 remain to be served.

9 **2. FACTS**

10 Mr. Doe began working for Trendwest in May 1999 as a Sales Representative. Trendwest  
 11 markets and sells vacation ownership interests. Mr. Doe held various positions with Trendwest  
 12 including Assistant Sales Manager and Project Manager. Trendwest was acquired by Cendant  
 13 Corporation in 2002.

14 There is no dispute that Mr. Doe applied and was approved for short-term disability  
 15 benefits under the Plan from April 23, 2004 through October 18, 2004. It is undisputed that Mr.  
 16 Doe was never paid by the Plan; however, Defendant avers that Plaintiff was not owed any  
 17 benefits under the Plan because they were completely offset by State Disability Insurance benefits.  
 18 Plaintiff contends that the version of the Plan and/or Summary Plan Description in effect at the  
 19 relevant time entitled Mr. Doe to an amount of benefits that would not have been completely  
 20 offset by State Disability Insurance, and that if the Plan had been amended, Mr. Doe received no  
 21 notice of the amendment. Mr. Doe was terminated by Cendant Corporation in November 2004.

22 Thus, the principal factual issue in dispute is the amount of short-term disability benefits  
 23 Mr. Doe is owed, if any.

24 **3. LEGAL ISSUES**

25 A. Whether Mr. Doe is entitled to any amount of benefits under the terms of the Plan.

26 **4. MOTIONS**

27 The parties anticipate filing cross-motions for summary judgment.

28

1     **5. AMENDMENT OF PLEADINGS**

2                 The parties do not yet know whether any amendment of pleadings will be necessary. Any  
3 amendments will be made no later than March 3, 2008.

4     **6. EVIDENCE PRESERVATION**

5                 All evidence has been preserved.

6     **7. DISCLOSURES**

7                 The parties exchanged initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on December  
8 31, 2007.

9     **8. DISCOVERY**

10                No discovery has been taken to date, and the parties expect that discovery will be limited  
11 in scope. Plaintiff expects to conduct discovery about the terms of the Plan and Summary Plan  
12 Description and the timing and content of any amendments thereto, including notice of  
13 amendments or material modifications, and the claims procedure for Mr. Doe's claim.

14                The parties do not propose to limit or modify the discovery rules.

15     **9. CLASS ACTIONS**

16                Not applicable.

17     **10. RELATED CASES**

18                None.

19     **11. RELIEF**

20                Plaintiff seeks payment of short-term disability benefits for the period from April 23, 2004,  
21 to October 18, 2004, plus prejudgment interest thereon. The principal amount of benefits due is  
22 \$30,291. This amount was calculated as follows. As shown in the summary plan description  
23 produced herewith, for an employee of Mr. Doe's tenure, the Plan provides up to 10 weeks of  
24 benefits at 100% of regular salary and up to 15 weeks at 70% of regular salary, with a reduction  
25 for state disability benefits. (P014.) Mr. Doe's covered salary was \$123,000 per year (P010) and  
26 he received state disability benefits of \$728 per week (P029). Thus, Plaintiff's past-due benefits  
27 net of state disability are \$30,291.00, plus prejudgment interest. In addition, if Plaintiff prevails,  
28

1 he will seek to recover his attorneys' fees and costs of suit pursuant to ERISA § 502(g), 29 U.S.C.  
 2 § 1132(g).

3       Defendant disagrees with Plaintiff's claim for relief. It is Defendant's position that Plaintiff  
 4 was eligible for a maximum benefit of \$500 per week in short-term disability benefits, as per the  
 5 March 1, 2004 amendment to the short-term disability plan that impacted certain sales employees  
 6 of Trendwest (including Plaintiff), less any amounts received from California state in disability  
 7 benefits. Because the Plaintiff received \$728 per week from California in short-term disability  
 8 benefits, his benefits under the Plan were fully offset, such that Plaintiff was not entitled to any  
 9 benefits under the Plan.

10      Defendant disputes that Plaintiff did not receive notice of the change to the short term  
 11 disability plan. Notice was provided in February 2004, prior to Plaintiff taking leave, and the  
 12 change to the plan also was effective prior to Plaintiff taking leave.

13      Plaintiff disagrees with Defendant's calculation because the purported Plan amendment  
 14 was not properly made and never reflected in the SPD.

15 **12. SETTLEMENT AND ADR**

16      The parties have not engaged in settlement discussions to date. The parties believe that  
 17 conducting discovery on the terms of the Plan will be necessary to position the parties to negotiate  
 18 a resolution. The parties intend to participate in mediation as soon as possible thereafter.

19 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

20      The parties do not consent.

21 **14. OTHER REFERENCES**

22      None suitable.

23 **15. NARROWING OF ISSUES**

24      Several issues have already been narrowed through responsive pleading, and the parties  
 25 anticipate that the dispositive issue – whether Plaintiffs' short-term disability benefits are entirely  
 26 offset under the terms of the Plan – can be narrowed by motions for summary judgment. The  
 27 parties do not request to bifurcate issues, claims, or defenses.

28

**16. EXPEDITED SCHEDULE**

2 Please see the proposed schedule in item No. 17.

**17. SCHEDULING**

4 The parties propose the following dates:

5 Discovery cutoff: March 3, 2008

6 Deadline for filing all dispositive motions: May 5, 2008

7 Trial: following decision on dispositive motions, according to the Court's calendar

**18. TRIAL**

9 One day bench trial.

**19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

11 Defendant discloses that Wyndham Worldwide Corporation has a financial interest in the  
12 outcome of the case.

13 Plaintiff knows of no non-party interested entity or person other than that disclosed by  
14 Defendant.

**20. OTHER MATTERS**

16 Defendant hereby attests that counsel for Plaintiff have authorized Defendant to  
17 electronically sign this Joint Case Management Statement on Plaintiff's behalf.

19 DATED: December 31, 2007

LEWIS, FEINBERG, LEE,  
RENAKER & JACKSON, P.C.

21 By: /s/Teresa S. Renaker  
Teresa S. Renaker  
Nina Wasow  
22 *Attorneys for Plaintiff*

24 DATED: December 31, 2007

PROSKAUER ROSE LLP

25 By: /s/George Samuel Cleaver  
Katharine H. Parker  
Dawn M. Irizarry  
George Samuel Cleaver  
26 *Attorneys for Defendant*

## [PROPOSED] ORDER

The above Joint Case Management Statement is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this order. In addition, the Court orders:

DATED: January, \_\_\_, 2008

Marilyn Hall Patel  
UNITED STATES DISTRICT JUDGE